

SERVICE DATE - SEPTEMBER 25, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32549 (Sub-No. 24)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY–
PETITION FOR REVIEW OF ARBITRATION AWARD

Decided: September 24, 2002

We are denying a petition filed by The Burlington Northern and Santa Fe Railway Company (BNSF) seeking review of an arbitration award that was issued on April 25, 2002, by a panel chaired by neutral member Christine D. Ver Ploeg that granted benefits under the New York Dock labor protective conditions¹ to Ms. Diane Suchy (Ms. Suchy or claimant).

BACKGROUND

In 1995, our predecessor, the Interstate Commerce Commission (ICC), approved the control and merger of the Burlington Northern Railroad Company (BN) and The Atchison, Topeka and Santa Fe Railway Company,² subject to the standard New York Dock conditions. As a result of the ICC's approval, the transaction was consummated and the two companies combined operations.

In a letter dated November 1, 1995, BNSF notified Ms. Suchy that, as a result of the transaction, her position was to be abolished effective January 1, 1996. Ms. Suchy had been employed as a Manager of Administration in BN's Mechanical Department at Fort Worth, TX. The letter advised Ms. Suchy that she could either receive a separation payment or exercise any seniority rights and receive no separation payment. The letter indicated that Ms. Suchy needed to choose one of the alternatives and advise the carrier of her decision by December 31, 1995.

In a letter dated November 21, 1995, Ms. Suchy advised BNSF that she wanted to exercise her seniority under a union agreement and return to a clerical position. She further indicated that, prior to selecting any of the options that BNSF had offered, she wanted to be advised if she would be eligible to receive a displacement allowance under the New York Dock conditions. Ms. Suchy further stated

¹ See New York Dock Ry.–Control–Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

² Burlington Northern et al.–Merger–Santa Fe Pacific et al., 10 I.C.C.2d 661 (1995).

that she elected to receive a dismissal allowance if not entitled to a displacement allowance under the New York Dock conditions.

In a letter dated December 14, 1995, BNSF advised Ms. Suchy that she was not eligible for New York Dock benefits because she had a management position.³ BNSF stated further that, if she continued to believe that she was eligible for New York Dock benefits, she should provide additional information to support her claim. In 1996, Ms. Suchy exercised her union seniority and obtained a position as a Customer Service Representative in BNSF's Revenue Management Department in Minnesota and has remained in that position since then.

In a letter dated June 29, 1998, counsel for claimant advised BNSF that he was submitting a claim on her behalf for a displacement allowance under the New York Dock conditions. In the letter, counsel asserted that Ms. Suchy was a non-agreement, exempt employee who was adversely affected by the BNSF merger and was thus entitled to benefits under Article IV of New York Dock.⁴ The letter indicated that, when Ms. Suchy's job was eliminated, she had to exercise her union seniority to obtain a clerical position at a significant salary decrease and loss of other fringe benefits.

BNSF and claimant's counsel continued to correspond but were unable to resolve the claim. They then submitted the dispute to arbitration before Neutral Ver Ploeg.⁵ The arbitration hearing was held on April 16, 2002. There, BNSF asserted that Ms. Suchy was a management employee and therefore was not entitled to New York Dock benefits. BNSF also challenged the timeliness of Ms. Suchy's claim, contending that the claim was barred by what it claims was the applicable statute of limitations and by the doctrine of laches because it was filed more than 2 years after her position was eliminated. Claimant asserted that the statute of limitations and the doctrine of laches did not apply and that, in any event, the claim was timely filed.

³ In BNSF's December 14, 1995 letter, Wendell A. Bell (Director, Labor Relations) stated that he was responding to Ms. Suchy's "claim for New York Dock benefits."

⁴ Article IV reads: "Employees of the railroad who are not represented by a labor organization shall be afforded substantially the same level of protection as are afforded to members of the labor organizations under these terms and conditions."

⁵ The arbitration panel also considered a claim for New York Dock benefits brought by another employee, Margaret Ellingston. The award determined that Ms. Ellingston was not entitled to New York Dock benefits because she had a management position. The claim of Ms. Ellingston is not before us in this appeal.

Neutral Ver Ploeg's award, which was issued on April 19, 2002, determined that Ms. Suchy was entitled to New York Dock benefits. Based on Ms. Suchy's testimony and affidavits from the former head of her department and her direct supervisor that were submitted by BNSF, Neutral Ver Ploeg found Ms. Suchy's position to have been that of a "highly responsible" administrative assistant rather than that of a manager.

The arbitrator also rejected BNSF's assertion that Ms. Suchy's claim was untimely. She determined that Ms. Suchy's letter of November 21, 1995, was a timely notice of her claim. The arbitrator noted that: "[while] it remains disturbing that Ms. Suchy did not further press this claim until 1998 [, if BNSF] had shown more than speculative prejudice as a result of this two and one-half year delay, decision on this question may well have gone the other way."⁶

BNSF filed its petition to review the arbitration award on May 15, 2002. Claimant filed a reply on June 4, 2002. On June 24, 2002, BNSF filed a reply to claimant's reply, and claimant responded on July 8, 2002.⁷

DISCUSSION AND CONCLUSIONS

Under 49 CFR 1115.8, the standard for review of arbitration decisions is provided in Chicago & North Western Tptn. Co.-Abandonment, 3 I.C.C.2d 729 (1987) (Lace Curtain), aff'd sub nom. International Broth. of Elec. Workers v. ICC, 862 F.2d 330 (D.C. Cir. 1988). Under Lace Curtain, we accord deference to arbitrators' decisions and will not review "issues of causation, calculation of benefits, or the resolution of factual questions" in the absence of egregious error. Review of arbitral decisions has been limited to "recurring or otherwise significant issues of general importance regarding the interpretation of our labor conditions." Id. at 736. We generally do not overturn an arbitral award unless it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or it is outside the scope of authority granted by the conditions. Applying these standards here, we find no basis for reviewing and overturning the arbitrator's decision in this case.

BNSF does not challenge the arbitrator's conclusion that Ms. Suchy was a clerical employee eligible for New York Dock protection. Rather, the carrier limits its arguments to two issues dealing with the timeliness of the claim. First, BNSF argues that a 2-year statute of limitations applies and bars

⁶ Arbitration Award at 12.

⁷ BNSF also filed a Motion for Leave to File a Reply, contending that Ms. Suchy's reply contains misstatements. The claimant objected to BNSF's Motion. We will accept these supplemental filings in the interest of a complete record.

this claim. Second, the railroad argues that Ms. Suchy's 2½ year delay in prosecuting her claim requires that we find the claim to be barred by the doctrine of laches.

Statute of Limitations. BNSF asks us to review the arbitrator's determination that Ms. Suchy's claim was timely filed. The carrier acknowledges that neither the BNSF merger decision nor the New York Dock conditions set a time limit for filing claims for benefits. BNSF contends, however, that the general 2-year statute of limitations for filing complaints in 49 U.S.C. 11705(c)⁸ should apply to claims for New York Dock benefits.

BNSF argues that application of the 2-year limit bars Ms. Suchy's claim for New York Dock benefits. The carrier contends that Ms. Suchy's claim arose in December 1995 when her position was eliminated and she was notified that she was not entitled to New York Dock benefits. However, the railroad states, Ms. Suchy did not file a sufficient complaint for benefits or invoke arbitration until the submission of the letter from her counsel dated June 29, 1998. BNSF contends that Ms. Suchy's letter of November 17, 1995, was a preliminary inquiry into whether she was eligible for New York Dock benefits and should not be considered a "complaint" sufficient to satisfy the 2-year statute of limitations. Even if the November 17, 1995 letter were considered a complaint, BNSF argues, the claimant waived her right to arbitrate the dispute pursuant to New York Dock because she delayed seeking arbitration for more than 2½ years, thereby failing to satisfy the statute of limitations.

In support, BNSF cites Modin v. New York Central Company, 650 F.2d 829 (1980) (Modin), cert. denied, 454 U.S. 967 (1981), which held that the 2-year statute of limitations, now in section 11705(c), applied to complaints filed initially in court as well as complaints before the agency. Thus, the court found time-barred a court action for damages brought by an employee's widow against a railroad alleging that cancellation of an insurance policy after the 1966 merger of the Pennsylvania and New York Central railroads violated an ICC order that extended employee benefits to non-union employees.

In reply, claimant asserts that the arbitrator correctly found that her claim was timely filed and that her letter of November 17, 1995, was timely notice of her claim. In addition, claimant argues that a 2-year statute of limitations does not apply to claims under the New York Dock conditions. Claimant suggests that, in any event, a carrier's failure to provide New York Dock benefits can be viewed as a

⁸ Section 11705(c) reads: "A person must file a complaint with the Board to recover damages under section 11704(b) of this title within 2 years after the claim accrues." Section 11704(b) reads: "A rail carrier providing transportation subject to the jurisdiction of the Board under this part is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this part. A rail carrier providing transportation subject to the jurisdiction of the Board under this part is liable to a person for amounts charged that exceed the applicable rate for the transportation."

continuing violation regarding which a claim would be proper at any time during the 6-year protective period.

The arbitrator's finding that Ms. Suchy's letter of November 21, 1995, gave BNSF timely notice of her claim for New York Dock benefits is limited to the specific facts of this case and is reasonable. BNSF's letter of November 1, 1995, advising Ms. Suchy that her position was being eliminated, asked her to notify the company by December 31, 1995, whether she decided to either accept a separation payment or exercise any union seniority. Ms. Suchy's November 21, 1995 response claimed that she was entitled to some type of New York Dock benefits and indeed BNSF itself referred to Ms. Suchy's letter as a "claim for New York Dock benefits." BNSF has failed to show that, under these circumstances, the arbitrator erred in finding that Ms. Suchy's 1995 letter was a claim for New York Dock benefits.

And, having found no basis for overturning the arbitrator's determination that Ms. Suchy's 1995 letter was a claim, we need not address (1) BNSF's assertion that the 2-year limitation in section 11705(c) should be applied to the filing of claims or the request for arbitration under New York Dock or (2) the applicability of Modin.

Laches. BNSF further contends that the claimant's delay in processing her claim amounts to laches, citing arbitration decisions that recognize laches to bar delayed claims.⁹ BNSF asserts further that it was prejudiced by the delay in processing the claim and hampered in locating and presenting documents and witnesses who could testify on its behalf. It notes that it was unable to present a certain witness who could have testified about the nature of Ms. Suchy's duties because the witness had retired and was not available to testify at the arbitration hearing. Ms. Suchy's delay in prosecuting her claim raises an issue of laches.

Ms. Suchy disputes that laches barred her claim, and cites arbitration decisions that rejected laches as applicable to arbitrations under the New York Dock conditions.¹⁰ She also disputes BNSF's assertions that it has been prejudiced by her delay in filing the claim. She argues that BNSF should have had the records available to submit in the arbitration proceeding. She notes that BNSF submitted affidavits from employees, including one from a retired employee who was Ms. Suchy's supervisor.

⁹ Southern Railway Company v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (Muessig, 1990); Transportation-Communications International Union v. Norfolk and Western Railway (LaRocco, 1990).

¹⁰ Brotherhood of Railway Carmen v. Burlington Northern Railroad Company (Marx, 1984); Transportation-Communications International Union v. Union Pacific Railroad Company (Stallworth, 1988).

The claimant asserts that testimony from those employees would have added little to their written affidavits.

We have recognized that arbitrators can dismiss claims for laches. In Grand Trunk Western Railroad Company–Merger–Detroit and Toledo Shore Line Railroad Company–Arbitration Review, Finance Docket No. 28676 (Sub-No. 2) (STB served Feb. 26, 1996) (GTW), we affirmed an arbitrator’s decision that dismissed claims for New York Dock benefits because the claims were delayed for almost 7 years. In the decision, we noted that an arbitrator acting under delegated authority could bar stale claims when the delays could make it difficult or impossible to determine whether claims are valid. We indicated further that: “[i]n the absence of any particular statutory deadlines for filing, or of any agency rule concerning the subject, we think that it is appropriate for the arbitral board to make determinations concerning timeliness, as necessary to protect the integrity of the arbitral process.” Id. at p.4.

Here, as in GTW, the arbitrator has looked to the need to protect the integrity of the arbitral process in deciding whether Ms. Suchy’s claim should be barred by laches. In finding that the passage of 2½ years did not constitute an unreasonable delay in filing the claim, the arbitrator based her conclusion on BNSF’s having shown only “speculative prejudice” as a result of the delay. In making her finding, the arbitrator employed the standard we had previously upheld in GTW. Her application of that standard to the facts of this case was not unreasonable. As the presiding officer at the hearing as well as the adjudicator, the arbitrator was in a position to make that determination. We apply our deferential Lace Curtain standard of review and, therefore, we will not disturb the arbitrator’s determination on the issue of laches.

Accordingly, we will deny BNSF’s appeal.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. BNSF’s motion for leave to file a reply is granted.
2. BNSF’s appeal is denied.

3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary